CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 36 MARCH 6, 2002 NO. 10

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

General Notices

NOTICE OF CANCELLATION OF CUSTOMS BROKER LICENSE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled without prejudice.

Name	*License No.*	*Port Name*
Kamden International Shipping, Inc.	11431	New York

Dated: February 14, 2002.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, February 21, 2002 (67 FR 8063)]

QUARTERLY IRS INTEREST RATES USED IN CALCULATING INTEREST ON OVERDUE ACCOUNTS AND REFUNDS ON CUSTOMS DUTIES

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the quarter beginning January 1, 2002, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the Federal Register on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2001–63 (*see*, 2001–52 IRB 1, dated December 24, 2001), the IRS determined the rates of interest for the calendar quarter beginning January 1, 2002, and ending March 31, 2002. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates are subject to change for the calendar quarter beginning April 1, 2002, and ending June 30, 2002.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning Date	*Ending Date*	*Underpayments (percent)*	*Overpayments (percent)*	*Corporate Overpayments (Eff. 1–1–99) (percent)*
Prior to 070174	063075	6 %	6 %	
070175	013176	9 %	9 %	
020176	013178	7 %	7 %	
020178	013180	6 %	6 %	
020180	013182	12 %	12 %	
020182	123182	20 %	20 %	
010183	063083	16 %	16 %	
070183	123184	11 %	11 %	
010185	063085	13 %	13 %	

Beginning Date	*Ending Date*	*Underpayments (percent)*	*Overpayments (percent)*	*Corporate Overpayments (Eff. 1–1–99) (percent)*
070185	123185	11 %	11 %	
010186	063086	10 %	10 %	
070186	123186	9 %	9 %	
010187	093087	9 %	8 %	
100187	123187	10 %	9 %	
010188	033188	11 %	10 %	
040188	093088	10 %	9 %	
100188	033189	11 %	10 %	
040189	093089	12 %	11 %	
100189	033191	11 %	10 %	
040191	123191	10 %	9 %	
010192	033192	9 %	8 %	
040192	093092	8 %	7 %	
100192	063094	7 %	6 %	
070194	093094	8 %	7 %	
100194	033195	9 %	8 %	
040195	063095	10 %	9 %	
070195	033196	9 %	8 %	
040196	063096	8 %	7 %	
070196	033198	9 %	8 %	
040198	123198	8 %	7 %	
010199	033199	7 %	7 %	6 %
040199	033100	8 %	8 %	7 %
040100	033101	9 %	9 %	8 %
040101	063001	8 %	8 %	7 %
070101	123101	7 %	7 %	6 %
010102	033102	6 %	6 %	5 %

Dated: February 15, 2002.

ROBERT C. BONNER,
Commissioner of Customs.

[Published in the Federal Register, February 21, 2002 (67 FR 8063)]

NOTICE OF AVAILABILITY OF DRAFT ENVIRONMENTAL ASSESSMENT FOR PUBLIC REVIEW CONCERNING PROPOSED CONSTRUCTION OF ADVANCED TRAINING CENTER AT HARPERS FERRY, WEST VIRGINIA

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: The Customs Service is issuing this notice to announce the availability for public review and comment of a draft Environmental Assessment (EA) for the proposed construction of an advanced training center at Harpers Ferry, West Virginia. The training center will provide firearms and tactical training for Customs officers. The draft EA has been prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations for Implementing the NEPA, and Treasury Department requirements. Significant public comments will assist in the agency's evaluation of the proposed project and will be reflected in the final EA.

DATES: The draft Environmental Assessment will be available for public review from February 21, 2002, through March 25, 2002. Written comments must be received by March 25, 2002.

ADDRESSES: Written comments may be submitted to Mr. Lee Sullivan, Contracting Officer, c/o Harpers Ferry Project, U.S. Customs Service, 6026 Lakeside Blvd., Field Procurement Services Branch, Indianapolis, IN 46278. The draft Environmental Assessment will be available for public review at the following locations:

1. Bolivar-Harpers Ferry Library, 600 Polk St., Harpers Ferry, West Virginia 25425.
2. Old Charles Town Library, 200 East Washington St., Charles Town, West Virginia 25414.
3. U.S. Customs Service, National Place, Procurement Division, Room 1310, 1331 Pennsylvania Ave., N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Sullivan at 317/298–1180 (ext. 1119) or at lee.a.sullivan@customs.treas.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Customs Service, pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations for Implementing the National Environmental Policy Act (40 CFR Parts 1500–1508), and Department of the Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), has prepared a draft Environmental Assessment (EA) related to the proposed construction of an advanced training center for Customs officers at Harpers Ferry, West Virginia. The proposed training center will expand Customs

training capability and provide firearms and tactical training tailored to the unique roles, requirements, and environments in which Customs officers perform their mission.

The draft EA addresses various project alternatives, their potential impacts on the environment, and proposed methods to mitigate impacts. The draft EA document will be available for public review between February 21 and March 25, 2002, at the following locations: (1) Bolivar-Harpers Ferry Library, 600 Polk St., Harpers Ferry, West Virginia 25425; (2) Old Charles Town Library, 200 East Washington St., Charles Town, West Virginia 25414; and (3) U.S. Customs Service, National Place, Procurement Division (Mr. Jim Lieberman), Room 1310, 1331 Pennsylvania Ave., N.W., Washington, D.C. 20229.

Significant comments received from the public and agencies during the review and comment period will be addressed in the final EA and included in an Appendix to the final EA. Should Customs determine, based on comments received and the information presented in the draft EA, that the design, new construction, and operation of the facility will not have a significant impact on the environment, Customs will prepare a Finding of No Significant Impact (FONSI) for publication in the Federal Register and in a newspaper in general circulation at the project location. Should Customs determine that significant environmental impacts exist due to the project, Customs will proceed with preparation of an Environmental Impact Statement as required under the NEPA, the Council on Environmental Quality Regulations for Implementing the NEPA, and the Department of the Treasury's environmental policies and procedures.

Dated: February 15, 2002.

JO ELLEN COHEN,
Acting Assistant Commissioner,
Office of Finance.

[Published in the Federal Register, February 21, 2002 (67 FR 8063)]

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 1–2002)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of January 2001. The last notice was published in the CUSTOMS BULLETIN on January 30, 2002.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building, 3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927–2330.

Dated: February 13, 2002.

JOANNE ROMAN STUMP,
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP0200001	20020111	20200111	MECO CORPORATION BARBEQUE GRILL OWNERS MANUAL 4100	MECO CORPORATION	N
COP0200002	20020116	20210116	CAPRI COLLECTION	YURMAN STUDIOS INC.	N
COP0200003	20020116	20220116	THOUSAND SAILS BRAND RICE STICK PACKAGING	ZHAOQING CEREALS & OILS IMPORT &	N
COP0200004	20020116	20200116	FAT ALBERT AND THE COSBY KIDS, EPISODE 65: "REBOP FOR	WILLIAM H. COSBY JR.	N
COP0200005	20020116	20200116	COLORFUL TURTLE	SHEILA LEILANI CHAMBERS	N
COP0200006	20020116	20200116	BVLGARI-PETITS ET MAMANS-AFTER SUN BODY LOTION	BULGARI S.P.A.	N
COP0200007	20020128	20210128	COBY CX-7 MINI AM/FM POCKET RADIO	COBY ELECTRONICS CORPORATION	N
COP0200008	20020128	20210128	P-5223 TUG-A-LONG PUPPIES W/SOUND & MVMNT (BULLDOG	PREFERRED PLUSH INT'L INC.	N
COP0200009	20020128	20210128	PM-7237-M ROWBOAT MONKEY (SINGS & MOVES)	PREFERRED PLUSH INT'L INC.	N
COP0200010	20020131	20220131	JIANGXI RICE VERMICELLI PACKAGING	NG FUNG HONG LTD.	N
COP0200011	20020131	20220131	FINE RICE VERMICELLI PACKAGING	NG FUNG HONG LTD.	N
SUBTOTAL RECORDATION TYPE			11		
TMK0200001	20020108	20070701	YAHOO!	YAHOO! INC.	N
TMK0200002	20020109	20110618	HARBOR BREEZE FAN COMPANY & DESIGN	LF CORPORATION	N
TMK0200003	20020109	20110112	LAY'S	RECOT, INC.	N
TMK0200004	20020110	20090824	YAHOO!	YAHOO! INC.	N
TMK0200005	20020110	20070225	YAHOO!	YAHOO! INC.	N
TMK0200006	20020110	20110828	PIKACHU	NINTENDO OF AMERICA INC.	N
TMK0200007	20020110	20100425	ZELDA	NINTENDO OF AMERICA INC.	N
TMK0200008	20020110	20090504	YAHOO!	YAHOO! INC.	N
TMK0200009	20020110	20091012	DO YOU YAHOO!?	YAHOO! INC.	N
TMK0200010	20020111	20101121	VIRTUAL STRETCH SYSTEM	THE LIMITED STORES INC.	N
TMK0200011	20020111	20110904	ARRAYWORKX	APPLIED PRECISION INC.	N
TMK0200012	20020111	20110803	COPPERTONE	SCHERING-PLOUGH HEALTHCARE PRODC	N
TMK0200013	20020111	20101010	DO YOU YAHOO!?	YAHOO! INC.	N
TMK0200014	20020111	20090921	YAHOOLIGANS!	YAHOO! INC.	N
TMK0200015	20020111	20101003	THE COLOR CANARY YELLOW	MINNESOTA MINING & MANUFACTURING	N
TMK0200016	20020114	20111117	TOM KITTEN	FREDERICK WARNE & CO., INC.	N
TMK0200017	20020116	20030403	ACOUSTIC WAVE	BOSE CORPORATION	N
TMK0200018	20020116	20100529	J'ADORE	PARFUMS CHRISTIAN DIOR, S.A.	N
TMK0200019	20020116	20060319	SUPERTUNIAS	PROVEN WINNERS NORTH AMERICA LLC	N
TMK0200020	20020116	20060123	GOLDEN BEAUTY	PROVEN WINNERS NORTH AMERICA LLC	N
TMK0200021	20020116	20101016	NO. 5	CHANEL, INC.	N
TMK0200022	20020116	20100919	MARIO PARTY	NINTENDO OF AMERICA INC.	N
TMK0200023	20020116	20080407	DIDDY KONG	NINTENDO OF AMERICA INC.	N
TMK0200024	20020116	20080628	METROID	NINTENDO OF AMERICA INC.	N
TMK0200025	20020116	20050709	DONKEY KONG	NINTENDO OF AMERICA INC.	N
TMK0200026	20020116	20110528	DR. MARIO	NINTENDO OF AMERICA INC.	N
TMK0200027	20020116	20030802	WINTENDO	NINTENDO OF AMERICA INC.	N
TMK0200028	20020116	20110220	ALL CITY ATHLETIQUES	PHAT FASHIONS LLC.	N
TMK0200029	20020116	20091229	BABY PHAT (STYLIZED)	PHAT FASHIONS LLC.	N
TMK0200030	20020116	20110403	MISCELLANEOUS DESIGN CAT	PHAT FASHIONS LLC.	N
TMK0200031	20020116	20110220	BABY PHAT AND DESIGN CAT	PHAT FASHIONS LLC.	N
TMK0200032	20020116	20110605	CLASSIC AMERICAN FLAVA	PHAT FASHIONS LLC.	N
TMK0200033	20020116	20110911	P LEAF AND FLAG DESIGN	PHAT FASHIONS LLC.	N
TMK0200034	20020116	20100801	PHAT	PHAT FASHIONS LLC.	N
TMK0200035	20020116	20101226	PHAT FARM	PHAT FASHIONS LLC.	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0200036	20020116	20110904	PHAT P FARM AND DESIGN	PHAT FASHIONS LLC.	N
TMK0200037	20020116	20110925	PHAT FARM (STYLIZED)	PHAT FASHIONS LLC.	N
TMK0200038	20020116	20110911	PHAT FARM AND DESIGN CREST	PHAT FASHIONS LLC.	N
TMK0200039	20020116	20091218	ZIG ZAG	BOLLORE, S.A.	N
TMK0200040	20020116	20050816	ZIG ZAG (DESIGN)	BOLLORE, S.A.	N
TMK0200041	20020116	20080630	DESIGN	BOLLORE, S.A.	N
TMK0200042	20020116	20080630	DESIGN	BOLLORE, S.A.	N
TMK0200043	20020117	20070502	PETTINICCHIO	CASEIFICIO PASQUALE PETTINICCHIO	N
TMK0200044	20020117	20060719	RUFFLES	RECOT, INC.	N
TMK0200045	20020117	20031110	RUFFLES	RECOT, INC.	N
TMK0200046	20020117	20080301	ACOUSTIMASS	BOSE CORPORATION	N
TMK0200047	20020117	20100720	HERSHEY'S AND DESIGN	HERSHEY CHOCOLATE & CONFECTIONER	N
TMK0200048	20020117	20101214	REESE'S MILK CHOCOLATE PEANUT BUTTER CUPS & DESIGN	HERSHEY CHOCOLATE & CONFECTIONER	N
TMK0200049	20020117	20040503	SYSTEM AND DESIGN	KIRKBI AG	N
TMK0200050	20020117	20070513	LEGO AND DESIGN	KIRKBI AG	N
TMK0200051	20020118	20101216	SNAP! CRACKLE! POP! DESIGN	KELLOGG COMPANY	N
TMK0200052	20020122	20090831	DESIGN	KIRKBI AG	N
TMK0200053	20020122	20090223	MINDSTORMS	KIRKBI AG	N
TMK0200054	20020122	20100703	SEAN JOHN	SEAN PUFFY COMBS	N
TMK0200055	20020122	20070218	JEWEL CUBE	BOSE CORPORATION	N
TMK0200056	20020123	20110205	LOS ANGELES CLIPPERS & DESIGN	LAC BASKETBALL CLUB INC.	N
TMK0200057	20020123	20100814	NBA LOGO WITH DESIGN	NBA PROPERTIES	N
TMK0200058	20020123	20101113	NBA LOGO WITH DESIGN	NBA PROPERTIES	N
TMK0200059	20020125	20110502	CONEJET	SPRAYING SYSTEMS CO.	N
TMK0200060	20020129	20110630	SEIKO (STYLIZED LETTERING)	SEIKO KABUSHIKI KAISHA	N
TMK0200061	20020129	20110731	DESIGN	CALLAWAY GOLF COMPANY	N
TMK0200062	20020130	20080317	EPSON	SEIKO EPSON KABUSHIKI KAISHA	N
TMK0200063	20020130	20040503	EPSON STYLUS	SEIKO EPSON KABUSHIKI KAISHA	N
TMK0200064	20020131	20101230	COPPER AND BLACK CYLINDRICAL BATTERY	THE GILLETTE COMPANY	N
TMK0200065	20020131	20110505	COPPER AND BLACK RECTANGULAR BATTERY	THE GILLETTE COMPANY	N
TMK0200066	20020131	20100612	DESIGN	MONTRES CORUM SA	N
TMK0200067	20020131	20071227	CORUM AND DESIGN	MONTRES CORUM SA	N
TMK0200068	20020131	20091114	LA TOUR EIFFEL PARIS	LE CHATEAU ANNE TRADING LTD CORP	N
TMK0200069	20020131	20040621	VVG VAN GOGH	CHATEAU ANNE U.S.A. INC.	N
TMK0200070	20020131	20100529	TIMBERGRASS	RESOURCE FIBER, INC.	N

SUBTOTAL RECORDATION TYPE 70

TOTAL RECORDATIONS ADDED THIS MONTH 81

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, February 20, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

DOUGLAS M. BROWNING,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CRIB SAFETY TENTS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of three tariff classification ruling letters and treatment relating to the classification of crib safety tents.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking HQ 960934, dated September 30, 1997; HQ 960933, dated September 30, 1997; and HQ 959262, dated May 6, 1997, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of crib safety tents. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of January 9, 2001, Vol. 36, No. 2. The Customs Service received no comments during the notice and comment period that closed on February 8, 2002.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Beth Safeer, Textiles Branch: (202) 927–1342.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ 960934, dated September 30, 1997; HQ 960933, dated September 30, 1997; and HQ 959262, dated May 6, 1997, relating to the tariff classification of crib safety tents was published on January 9, 2002, in Vol. 36, No. 2 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

Customs previously classified crib safety tents under subheading 9403.90.6000, HTSUSA, which provides for "Other furniture and parts thereof: Parts: Other: Of textile material, except cotton." Based on our analysis of the scope of the terms of the heading to 9403, HTSUSA, and heading 6304, HTSUSA, the Legal Notes, and the Explanatory Notes, the crib safety tents of the type discussed herein, are classifiable in subheading 6304.91.0040, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404; Other Knitted or crocheted: Of man-made fibers."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 960934 by the issuance of 965258 (Attachment A), HQ 960933 by the issuance of 965259 (Attachment B) and HQ 959262 by the issuance of 965257(Attachment C) and any other ruling not specifically identified, that is contrary to the position set forth in this notice, to reflect the proper classification of the merchandise pursuant to the analysis set forth in the proposed foregoing identified rulings. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

As stated in the proposed notice, this revocation will cover any rulings, which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) contrary to the position set forth in this notice, should have advised Cus-

toms during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: February 14, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 14, 2002.

CLA–2 RR:CR:TE 965258 BAS
Category: Classification
Tariff No. 6304.91.0040

MR. JOHN F. COWEN
PHILIP T. COWEN CUSTOMHOUSE BROKERS
1918 East Elizabeth
Brownsville, TX 78520

Re: Revocation of HQ 960934, September 30, 1997; Classification of a crib safety tent.

DEAR MR. COWEN:

This is in reference to Headquarters Ruling Letter (HQ) 960934 issued to you on September 30, 1997, in which you were informed that HQ 088553, dated November 6, 1991 and HQ 087844, dated November 30, 1990, which concerned your client Tots In Mind, Inc., had been revoked by operation of law. The aforementioned rulings concern the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a crib tent.

As a result of *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), you were informed that HQ 087844 and HQ 088553 were revoked by operation of law. Accordingly, in HQ 960934, dated September 30,

1997, we found that a crib tent was classified in subheading 9403.90.6000, HTSUSA, which provides for "Other furniture and parts thereof: Parts: Other: Of textile material, except cotton." We have now had occasion to review that decision and found it to be in error. This ruling letter revokes HQ 960934, dated September 30, 1997.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S. C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 960934, as described below, was published in the CUSTOMS BULLETIN, Volume 36, Number 2, on January 9, 2002. The Customs Service received no comments during the notice and comment period that closed on February 8, 2002.

Facts:

The merchandise under consideration is a crib safety tent. The crib tent identified as a "Cozy Crib Tent" is described as an attachment to and over a crib to prevent injuries that might otherwise occur when a child attempts to climb out of a crib. The item's upper portion is composed of knit mesh net material and the sides are composed of woven nylon material. The crib tent is attached to a crib by means of polyester cord ties and straps with hook and loop type fabric fasteners. There is a plastic zipper opening on the front that keeps the child safely in the crib. The framing is made of fiberglass rods with metal attachments.

Issue:

Whether the crib tent is properly classifiable in heading 9403, HTSUSA, which provides for other furniture and parts thereof or in heading 6304, HTSUSA, as an other furnishing article?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The crib safety tent is potentially classifiable in two HTSUSA headings. One possible heading is 9403, HTSUSA, which provides for other furniture and parts thereof. The other possible heading is heading 6304, HTSUSA, which provides for other furnishing articles, excluding those of heading 9404, HTSUSA.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9403, HTSUSA, includes "Other furniture and parts thereof." The subheadings include *inter alia* metal, wooden, plastic and bamboo furniture. The ENs to heading 9403 state that the heading covers furniture and parts thereof, **not covered** by the previous headings. It includes *inter alia* furniture for general use (e.g. cupboards, show-cases, tables, telephone stands, writing desk, escritoires, book-cases, and other shelved furniture), and also furniture for special uses. Other examples listed include folding beds, playpens, cabinets, bread chests, wardrobes, clothes lockers, card index files, school desks, laboratory benches, drawer cupboards etc. While a crib is similar to the items listed in the exemplars to heading 9403, HTSUSA, the crib tent is an accessory to the crib rather than a part of the crib.

In *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), the Court addressed the issue of whether or not a canopy designed to fit over a child automobile safety seat which was imported separately and sold as part of the seat to which it was attached was a "part" of the child safety seat for classification purposes. The Court held that because the canopy was dedicated for use with the car seat it was properly considered a "part" under the HTSUSA and therefore classifiable in subheading 9403.90.8080, HTSUSA, which provides for other furniture and parts thereof: parts; other: other, other.

Notably, in *Bauerhin* the canopies that were classified as **parts** of car seats were specially designed to fit over child automobile safety seats. **[Emphasis added].** Although the

canopies were imported separately from the seats with which they were to be used, they were sold as parts of the seats to which they were attached. In contrast, the Cozy Crib Tent at issue is not sold as part of the crib to which it attaches. The Cozy Crib Tent is an optional item that is sold separately. While the canopy discussed in *Bauerhin* is designed to fit a particular car seat, the Cozy Crib Tent could be used with any crib. Thus the *Bauerhin* rationale does not extend to the instant merchandise. Accordingly, the crib safety tent is not properly classified as a part of furniture in heading 9403, HTSUSA.

Heading 6304, HTSUSA

Having determined that the crib safety tent is not properly classifiable as a part of furniture under heading 9403, HTSUSA, we must now determine whether or not the crib safety tent is properly classifiable in Heading 6304, HTSUSA, as an other furnishing article. Heading 6304, HTSUSA, provides for "Other furnishing articles excluding those of heading 9404."

According to *Merriam Webster's Deluxe Dictionary 10th Collegiate Edition*, The Readers Digest Association, Inc., 1998 at 746, a furnishing is "an object that tends to increase comfort or utility." The crib tent is an article that would increase both comfort and utility. The crib tent increases the parents' comfort level knowing that it will keep the child from climbing out or falling out of the crib. Thus, it increases the utility of the crib. Knowing that the child is safe within the crib, the parents may use the crib as a place to put the child while they are focusing on another task, thereby increasing the crib's utility.

The exemplars listed in the ENs to heading 6304, HTSUSA include *inter alia* wall hangings and textile furnishings for ceremonies, mosquito nets and bedspreads, cushion covers, loose covers for furniture, table covers and antimacassars. Many of these exemplars are united by the fact that they serve a protective or decorative function. Wall hangings, textile furnishings and cushion covers all form part of a room's décor. Other exemplars listed in the ENs serve a protective function in addition to a decorative function. That is, they protect either people (the mosquito nets) or furniture (loose covers for furniture or table covers). The subject merchandise is similar to the mosquito netting in that both are composed of net material and both serve to protect persons. Mosquito netting protects people from harmful insect bites as the crib tent protects babies from harmful falls and potential injuries. Mosquito netting, draped over a bed, may also serve a decorative function. Accordingly, the crib safety tent is "ejusdem generis" or "of the same kind" of merchandise as the exemplars listed in heading 6304, HTSUSA.

Holding:

The "Cozy Crib Tent," composed of knit mesh material and woven nylon material is properly classified in subheading 6304.91.0040, HTSUSA which provides for "Other furnishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of man-made fibers." The general column one rate of duty is 7.5 percent *ad valorem*. The textile quota category applicable to this provision is 666.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 14, 2002.

CLA-2 RR:CR:TE 965259 BAS
Category: Classification
Tariff No. 6304.91.0040

MR. MICHAEL MANZI, ESQUIRE
59 Jackson Street
Lawrence, MA 01840-1624

Re: Revocation of HQ 960933, September 30, 1997; Classification of a crib safety tent.

DEAR MR. MANZI:

This is in reference to Headquarters Ruling Letter (HQ) 960933 issued to you on September 30, 1997 in which you were informed that HQ 088553, dated November 6, 1991 and HQ 087844, dated November 30, 1990, which concerned your client Tots In Mind, Inc., had been revoked by operation of law. The aforementioned rulings concern the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a crib tent.

As a result of *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), you were informed that HQ 087844 and HQ 088553 were revoked by operation of law. Accordingly, in HQ 960933, dated September 30, 1997, we found that a crib tent was classified in subheading 9403.90.6000, HTSUSA, which provides for "Other furniture and parts thereof: Parts: Other: Of textile material, except cotton." We have now had occasion to review that decision and found it to be in error. This ruling letter revokes HQ 960933, dated September 30, 1997.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S. C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 960933, as described below, was published in the CUSTOMS BULLETIN, Volume 36, Number 2, on January 9, 2002. The Customs Service received no comments during the notice and comment period that closed on February 8, 2002.

Facts:

The merchandise under consideration is a crib safety tent. The crib tent identified as a "Cozy Crib Tent" is described as an attachment to and over a crib to prevent injuries that might otherwise occur when a child attempts to climb out of a crib. The item's upper portion is composed of knit mesh net material and the sides are composed of woven nylon material. The crib tent is attached to a crib by means of polyester cord ties and straps with hook and loop type fabric fasteners. There is a plastic zipper opening on the front that keeps the child safely in the crib. The framing is made of fiberglass rods with metal attachments.

Issue:

Whether the crib tent is properly classifiable in heading 9403, HTSUSA, which provides for other furniture and parts thereof or in heading 6304 HTSUSA, as an other furnishing article?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The crib safety tent is potentially classifiable in two HTSUSA headings. One possible heading is 9403, HTSUSA, which provides for other furniture and parts thereof. The other possible heading is heading 6304, HTSUSA, which provides for other furnishing articles, excluding those of heading 9404, HTSUSA.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while

neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9403, HTSUSA, includes "Other furniture and parts thereof." The subheadings include *inter alia* metal, wooden, plastic and bamboo furniture. The ENs to heading 9403 state that the heading covers furniture and parts thereof, **not covered** by the previous headings. It includes *inter alia* furniture for general use (e.g. cupboards, show-cases, tables, telephone stands, writing desk, escritoires, book-cases, and other shelved furniture), and also furniture for special uses. Other examples listed include folding beds, playpens, cabinets, bread chests, wardrobes, clothes lockers, card index files, school desks, laboratory benches, drawer cupboards etc. While a crib is similar to the items listed in the exemplars to heading 9403, HTSUSA, the crib tent is an accessory to the crib rather than a part of the crib.

In *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), the Court addressed the issue of whether or not a canopy designed to fit over a child automobile safety seat which was imported separately and sold as part of the seat to which it was attached was a "part" of the child safety seat for classification purposes. The Court held that because the canopy was dedicated for use with the car seat it was properly considered a "part" under the HTSUSA and therefore classifiable in subheading 9403.90.8080, HTSUSA, which provides for other furniture and parts thereof: parts; other: other, other.

Notably, in *Bauerhin* the canopies that were classified as **parts** of car seats were specially designed to fit over child automobile safety seats. **[Emphasis added].** Although the canopies were imported separately from the seats with which they were to be used, they were sold as parts of the seats to which they were attached. In contrast, the Cozy Crib Tent at issue is not sold as part of the crib to which it attaches. The Cozy Crib Tent is an optional item that is sold separately. While the canopy discussed in *Bauerhin* is designed to fit a particular car seat, the Cozy Crib Tent could be used with any crib. Thus the *Bauerhin* rationale does not extend to the instant merchandise. Accordingly, the crib safety tent is not properly classified as a part of furniture in heading 9403, HTSUSA.

Heading 6304, HTSUSA

Having determined that the crib safety tent is not properly classifiable as a part of furniture under heading 9403, HTSUSA, we must now determine whether or not the crib safety tent is properly classifiable in Heading 6304, HTSUSA, as an other furnishing article. Heading 6304, HTSUSA, provides for "Other furnishing articles excluding those of heading 9404."

According to *Merriam Webster's Deluxe Dictionary (10th Collegiate Edition*, The Readers Digest Association, Inc., 1998 at 746, a furnishing is "an object that tends to increase comfort or utility." The crib tent is an article that would increase both comfort and utility. The crib tent increases the parents' comfort level knowing that it will keep the child from climbing out or falling out of the crib. Thus, it increases the utility of the crib. Knowing that the child is safe within the crib, the parents may use the crib as a place to put the child while they are focusing on another task, thereby increasing the crib's utility.

The exemplars listed in the ENs to heading 6304, HTSUSA, include *inter alia* wall hangings and textile furnishings for ceremonies, mosquito nets and bedspreads, cushion covers, loose covers for furniture, table covers and antimacassars. Many of these exemplars are united by the fact that they serve a protective or decorative function. Wall hangings, textile furnishings and cushion covers all form part of a room's décor. Other exemplars listed in the ENs serve a protective function in addition to a decorative function. That is, they protect either people (the mosquito nets) or furniture (loose covers for furniture or table covers). The subject merchandise is similar to the mosquito netting in that both are composed of net material and both serve to protect persons. Mosquito netting protects people from harmful insect bites as the crib tent protects babies from harmful falls and potential injuries. Mosquito netting, draped over a bed, may also serve a decorative function. Accordingly, the crib safety tent is "ejusdem generis" or "of the same kind" of merchandise as the exemplars listed in heading 6304, HTSUSA.

Holding:

The "Cozy Crib Tent," composed of knit mesh material and woven nylon material is properly classified in subheading 6304.91.0040, HTSUSA which provides for "Other fur-

nishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of man-made fibers." The general column one rate of duty is 7.5 percent *ad valorem*. The textile quota category applicable to this provision is 666.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 14, 2002.

CLA-2 RR:CR:TE 965257 BAS
Category: Classification
Tariff No. 6304.91.0040

MR. JEFFREY RENAUT
A & A CUSTOMS BROKERS, LTD.
425 Medford Street
Charlestown Marine Industrial Park
Charlestown, MA 02129

Re: Revocation of HQ 959262, May 6, 1997; Classification of "Cozy Crib Tent".

DEAR MR. RENAULT:

This is in reference to Headquarters Ruling Letter (HQ) 959262 issued to you on May 6, 1997, in response to your letter of May 3, 1996 to the U.S. Customs Service, Office of Regulations and Rulings on behalf of your client, Tots in Mind, Inc., requesting a ruling on the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a crib tent.

In HQ 959262, a crib tent was classified in subheading 9403.90.6000, HTSUSA, which provides for "Other furniture and parts thereof: Parts: Other: Of textile material, except cotton." We have now had occasion to review that decision and found it to be in error insofar as the classification of the crib tent is concerned. This ruling letter revokes HQ 959262.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 959262, as described below, was published in the CUSTOMS BULLETIN, Volume 36, Number 2, on January 9, 2002. The Customs Service received no comments during the notice and comment period that closed on February 8, 2002.

Facts:

The merchandise under consideration is a crib safety tent. The crib tent identified as a "Cozy Crib Tent," style number 1000, is described as an attachment to and over a crib to prevent injuries that might otherwise occur when a child attempts to climb out of a crib.

The item's upper portion is composed of knit mesh net material and the sides are composed of woven nylon material. The crib tent is attached to a crib by means of polyester cord ties and straps with hook and loop type fabric fasteners. The article is given shape with the support of fiberglass rods, which connect in pairs and slide through sleeves. There are sleeves that cross diagonally over the center of the material, and two sleeves located at the bottoms of the two longest sides. When the sleeved rods are inserted into rod pockets at the item's corners, the center of the material becomes the top of a domed enclosure. There also is a long zipper closure, the pull tab of which may be placed in a pocket that is inaccessible to the child.

Issue:

Whether the crib tent is properly classifiable in heading 9403, HTSUSA, which provides for other furniture and parts thereof or in heading 6304, HTSUSA, as an other furnishing article?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The crib safety tent is potentially classifiable in two HTSUSA headings. One possible heading is 9403, HTSUSA, which provides for other furniture and parts thereof. The other possible heading is 6304, HTSUSA, which provides for other furnishing articles, excluding those of heading 9404, HTSUSA.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9403, HTSUSA, includes "Other furniture and parts thereof." The subheadings include *inter alia* metal, wooden, plastic and bamboo furniture. The ENs to heading 9403 state that the heading covers furniture and parts thereof, **not covered** by the previous headings. It includes *inter alia* furniture for general use (e.g. cupboards, show-cases, tables, telephone stands, writing desk, escritoires, book-cases, and other shelved furniture), and also furniture for special uses. Other examples listed include folding beds, playpens, cabinets, bread chests, wardrobes, clothes lockers, card index files, school desks, laboratory benches, drawer cupboards etc. While a crib is similar to the items listed in the exemplars to heading 9403, HTSUSA, the crib tent is an accessory to the crib rather than a part of the crib.

In *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), the Court addressed the issue of whether or not a canopy designed to fit over a child automobile safety seat which was imported separately and sold as part of the seat to which it was attached was a "part" of the child safety seat for classification purposes. The Court held that because the canopy was dedicated for use with the car seat it was properly considered a "part" under the HTSUSA and therefore classifiable in subheading 9403.90.8080, HTSUSA, which provides for other furniture and parts thereof: parts; other: other, other.

Notably, in *Bauerhin* the canopies that were classified as **parts** of car seats were specially designed to fit over child automobile safety seats. [Emphasis added]. Although the canopies were imported separately from the seats with which they were to be used, they were sold as parts of the seats to which they were to be attached. In contrast, the Cozy Crib Tent at issue is not sold as part of the crib to which it attaches. The Cozy Crib Tent is an optional item that is sold separately. While the canopy discussed in *Bauerhin* is designed to fit a particular car seat, the Cozy Crib Tent could be used with any crib. Thus the *Bauerhin* rationale does not extend to the instant merchandise. Accordingly, the crib safety tent is not properly classified as a part of furniture in heading 9403, HTSUSA.

Heading 6304, HTSUSA

Having determined that the crib safety tent is not properly classifiable as a part of furniture under heading 9403, HTSUSA, we must now determine whether or not the crib safe-

ty tent is properly classifiable in Heading 6304, HTSUSA, as an other furnishing article. Heading 6304, HTSUSA, provides for "Other furnishing articles excluding those of heading 9404."

According to *Merriam Webster's Deluxe Dictionary at 746 (10th Collegiate Edition*, The Readers Digest Association, Inc., 1998) a furnishing is "an object that tends to increase comfort or utility." The crib tent is an article that would increase both comfort and utility. The crib tent increases the parents' comfort level knowing that it will keep the child from climbing out or falling out of the crib. Thus, it increases the utility of the crib. Knowing that the child is safe within the crib, the parents may use the crib as a place to put the child while they are focusing on another task, thereby increasing the crib's utility.

The exemplars listed in the ENs to heading 6304, HTSUSA include *inter alia* wall hangings and textile furnishings for ceremonies, mosquito nets and bedspreads, cushion covers, loose covers for furniture, table covers and antimacassars. Many of these exemplars are united by the fact that they serve a protective or decorative function. Wall hangings, textile furnishings and cushion covers all form part of a room's décor. Other exemplars listed in the ENs serve a protective function in addition to a decorative function. That is, they protect either people (the mosquito nets) or furniture (loose covers for furniture or table covers). The subject merchandise is similar to the mosquito netting in that both are composed of net material and both serve to protect persons. Mosquito netting protects people from harmful insect bites as the crib tent protects babies from harmful falls and potential injuries. Mosquito netting, draped over a bed, may also serve a decorative function. Accordingly, the crib safety tent is "ejusdem generis" or "of the same kind" of merchandise as the exemplars listed in heading 6304, HTSUSA.

Holding:

The "Cozy Crib Tent," composed of knit mesh material and woven nylon material is properly classified in subheading 6304.91.0040, HTSUSA which provides for "Other furnishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of man-made fibers." The general column one rate of duty is 7.5 percent *ad valorem*. The textile quota category applicable to this provision is 666.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CRIB BUMPERS AND PADDED HEADBOARDS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of modification of a tariff classification ruling letter and revocation of treatment relating to the classification of a crib bumper and padded headboard.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is modifying New York (NY) Decision Letter E89383, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a crib bumper and padded headboard. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed modification was published in the CUSTOMS BULLETIN of December 26, 2001, Vol. 35, No. 52. The Customs Service received no comments during the notice and comment period that closed on January 25, 2002.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Beth Safeer, Textiles Branch: (202) 927–1342.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1), notice proposing to modify New York (NY) decision

NY E89383, dated November 23, 1999, was published on December 26, 2001, in Vol. 35, No. 52, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

Customs previously classified crib bumpers and padded headboards under subheading 6307.90.9989, HTSUSA, (6307.90.9889, HTSUSA, 2002) which provides for other made up textile articles. NY E89383, dated November 23, 1999, classified a crib bumper and soft headboard in subheading 9403.90.8080, HTSUSA, which provides for "Other furniture and parts thereof: Parts: Other: Other: Other." Based on our analysis of the scope of the terms of the heading to 9403, HTSUSA, and 6307, HTSUSA, the Legal Notes, and the Explanatory Notes, the crib bumper and padded headboard of the type discussed herein, are classifiable in subheading 6307.90.9889, HTSUSA, which provides for "Other made up articles, including dress patterns: Other; Other: Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY E89383 by the issuance of HQ 965149 (Attachment) and any other ruling not specifically identified, that is contrary to the position set forth in this notice, to reflect the proper classification of the merchandise pursuant to the analysis set forth in the foregoing identified ruling. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

As stated in the proposed notice, this revocation will cover any rulings which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) contrary to the position set forth in this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: February 14, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, February 14, 2002.

CLA–2 RR:CR:TE 965149 BAS
Category: Classification
Tariff No. 6307.90.9889

MS. LEIGH SMITH
US JHI CORPORATION
8612 Fairway Place
Middleton, WI 53562

Re: Modification of NY E89383, November 23, 1999; Classification of bumper pad and soft padded headboard.

DEAR MS. SMITH:

This is in reference to New York Ruling Letter (NY) E89383 issued to you on November 23, 1999, in response to your letter of October 27, 1999 to the Director, Customs National Commodity Specialist Division in New York, on behalf of US JHI Corporation, requesting a ruling on the classification under the Harmonized Tariff Schedule of the United States Annnotated (HTSUSA) of a bumper pad, comforter, soft headboard, fitted sheet and bed skirt.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S. C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY E89383, as described below, was published in the CUSTOMS BULLETIN, Volume 35, Number 52, on December 26, 2001. The Customs Service received no comments during the notice and comment period that closed on January 25, 2002.

In NY E89383, dated November 23, 1999, a five piece bedding set imported packed for retail sale was classified in subheading 9404.90.8522, HTSUS, which provides for mattress supports; articles of bedding and similar furnishing fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered. Appropriate classifications were provided for each item in the set should it be imported separately. The bumper pad and soft headboard were classified in subheading 9403.90.8080, HTSUSA, which provides for other furniture and parts thereof. We have now had occasion to review that decision and found it to be in error insofar as the classification of the crib bumper and padded headboard is concerned.

Facts:

The merchandise under consideration consists of a bumper pad and a soft headboard for a crib.

One side of the bumper pad (KT948 BP) is made from 100 percent cotton woven fabric. This "farm checked" fabric is printed with a check pattern that incorporates sheep and clover in the design. The reverse side is made from 65 percent polyester and 35 percent cotton woven fabric. This side is solid yellow in color. It features tie strings used to attach the pad to the crib. It also has piping and a ruffle.

The soft headboard (KT948S) is dome shaped and has tie strings used to attach the item to the headboard of a crib. One side is made from the "farm checked" 100 percent cotton woven fabric and the other side from a 65 percent polyester and 35 percent cotton woven fabric. The top and side edges have a sewn in ruffle and piping. The front panel contains a sheep and clover embroidered and appliqued design.

The bumper pad and soft headboard were classified in subheading 9403.90.8080, HTSUSA, which provides for other furniture and parts thereof. This ruling letter only modifies NY E89383 insofar as it concerns the classifications of the bumper pad and soft headboard when imported separately.

Issue:

Whether the bumper pad and padded headboard are properly classifiable in heading 9403, HTSUSA, as other furniture and parts thereof or under heading 6307, HTSUSA, as other made-up textile articles?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The crib bumper pad and headboard are potentially classifiable in two HTSUSA headings. One possible heading is 9403, HTSUSA, which provides for other furniture and parts thereof. Heading 6307, HTSUSA, which provides for other made up textile articles, is the other potentially applicable heading for the articles in question.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9403 includes "Other furniture and parts thereof." Note 4(A) of the Chapter Notes to Chapter 94 defines furniture as:

Any "movable" articles (not included under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals, dentists' surgeries, etc. or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be "movable" furniture even if they are designed for bolting, etc. to the floor, e.g. chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc. are also included in this category.

In the instant case, the crib bumper and padded headboard are not "ejusdem generis" or "of the same kind" of merchandise as the items listed in heading 9403 and/or the furniture and parts referred to in the EN. None of the exemplars are soft or stuffed items like the subject merchandise. The exemplars are predominantly composed of wood, metal or other rigid material. Nor do any of the exemplars serve a protective function as do the crib bumper and padded headboard. Accordingly, the crib bumper pad and padded headboard are not properly classifiable under heading 9403.

In *Bauerhin Technologies Limited Partnership v. U.S.*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), the Court addressed the issue of whether or not a canopy designed to fit over a child automobile safety seat which was imported separately and sold as part of the seat to which it was attached was a "part" of the child safety seat for classification purposes. The Court held that because the canopy was dedicated for use with the car seat it was properly considered a "part" under the HTSUSA and therefore classifiable in subheading 9403.90.8080, HTSUSA, which provides for other furniture and parts thereof: parts; other: other, other.

Notably, in *Bauerhin* the canopies that were classified as **parts** of car seats were specially designed to fit over child automobile safety seats. **[Emphasis added].** Although the canopies were imported separately from the seats with which they were to be used, they were sold as parts of the seats to which they were to be attached. In contrast, the crib

bumper and padded headboard in the instant case are not sold as parts of the cribs to which they attach. The bumper and padded headboard are optional items and are sold separately as part of a five piece **bedding** set. **[Emphasis added]** While the canopy discussed in *Bauerhin* is designed to fit a particular car seat, the bumper pad and headboard could be used with any crib. Thus the *Bauerhin* rationale does not extend to the instant merchandise.

This office has followed *Bauerhin* in select cases where the merchandise either had rigid parts making it similar to the exemplars listed in heading 9403 or where the merchandise was designed, marketed and sold to be attached to a particular piece of furniture or equipment. See HQ 959262, May 6, 1997 ("Cozy Crib Tent" given shape by the support of fiberglass rods classified in heading 9403); HQ 960933 and HQ 960934, both dated September 30, 1997 (concerning crib tents with fiberglass rods and metal attachments); HQ 088553, dated November 6, 1991; HQ 087844, dated November 30, 1990 (Cozy Crib tents with frame of fiberglass rods with metal attachments classified in 9403). The crib bumper and padded headboard are distinguishable from the crib tents in that they contain no rigid supports or parts. Nor are the crib bumper and padded headboard dedicated solely for use with a particular crib. See HQ 962186, June 1, 1999 (Mosquito netting designed to fit over a specific "Pack-N-Play" model play pen classified in heading 9403).

Heading 6307, HTSUSA, is a residual provision which provides for other made up articles of textiles. Section Note 7 (e) of Section XI, which covers textiles and textile articles states in pertinent part as follows:

> 7. For the purposes of this Section the expression "made up" means:
> Assembled by sewing * * *

The instant article has been assembled by sewing, therefore it constitutes a made up textile article. The Explanatory Notes state regarding Heading 6307:

> This heading covers made up articles of any textile material which are **not included** more specifically in the heading of Section XI or elsewhere in the Nomenclature.

Since the padded headboard and crib bumper at issue are not covered by any more specific heading, they are classifiable in Heading 6307, HTSUSA.

Customs has consistently classified merchandise that is almost identical to the subject merchandise under heading 6307. See HQ 965008, dated August 27, 2001; HQ 961391, dated April 19, 1998; HQ 959347, dated July 18, 1996; NY G87894, dated March 26, 2001; NY G85992, January 11, 2001; NY 807912, dated May 29, 1995; NY 885602, May 10, 1993; NY 851101, dated April 25, 1990.

Holding:

The bumper pad and soft padded headboard made from 100 percent cotton woven fabric are properly classified in subheading 6307.90.9889, HTSUSA, which provides for "Other made up articles, including dress patterns; Other; Other: Other: Other: Other." The general column one rate of duty is 7 percent *ad valorem*. There is no textile quota category applicable to this provision.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local Customs office prior to importing the merchandise to determine the current applicability of any import restraints or requirements.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO COMPLIANCE WITH ACTUAL USE REGULATIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to compliance with actual use regulations.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling relating to the showing of intent as to actual use under section 10.134 of the Customs Regulations (19 CFR 10.134), and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed revocation was published on January 9, 2002, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 6, 2002.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility.** These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on January 9, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 2, proposing to revoke HQ 961431, dated December 1, 1998. This decision held that the

failure to file a declaration of intended use with the consumption entry, as required by section 10.134 of the Customs Regulations, was not fatal to an actual use claim under heading 9817.00.60, HTSUS. In that the declaration could be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation became final, in accordance with section 10.112 of the Customs Regulations. The only comment received in response to this notice raised an ancillary issue which has been independently addressed.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 961431 to reflect the proper interpretation of section 10.134 of the Customs Regulations, in the described circumstances, pursuant to the analysis in HQ 965354, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: February 14, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, February 14, 2002.

CLA–2 RR:CR:GC 965354 JAS
Category: Classification
Tariff No. None

TOWER GROUP INTERNATIONAL
6730 Middlebelt Road
Romulus, MI 48174–2039

Re: HQ 961431 Revoked; Declaration of Intended Use Under Actual Use Provision.

DEAR SIRS:

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 961431 was published on January 9, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 2. The only comment received in response to this notice raised an ancillary issue which has been independently addressed. As stated in the proposed notice of revocation, since HQ 961431 was a protest review decision, liquidation of the entries in the protest will be undisturbed.

Facts:

The merchandise in HQ 961431, internal combustion engines for use with agricultural machinery, was entered under a provision in heading 8408, Harmonized Tariff Schedule of the United States (HTSUS), as other internal combustion engines. The entries were liquidated dutiable under this provision. On protest, a claim was made under heading 9817.00.60, HTSUS, as parts to be used in articles provided for in headings 8432, 8433, 8434 and 8436. The claim is based on the fact that the commercial invoice and bill of lading indicate that the engines were intended for use in agricultural implements. The record reflects that the declaration of intended use required to support a claim under heading 9817 was not filed with the entry summary but rather, twenty one days thereafter.

Issue:

Whether a declaration of intended use submitted after the consumption entry is filed is sufficient proof of required intent under an actual use provision.

Law and Analysis:

The engines were entered under subheading 8408.90.90, HTSUS, as other compression-ignition internal combustion piston engines (diesel or semi-diesel engines), and the entries liquidated dutiable. The claim on protest is under heading 9817.00.60, HTSUS, as parts to be used in articles provided for in headings 8432, 8433, 8434 and 8436. This is a duty-free provision for parts of machinery, equipment and implements to be used for agricultural or horticultural purposes.

As indicated in HQ 961431, the stated use of the engines is in a legitimate agricultural or horticultural pursuit. However, there must be compliance with the actual use regulations in sections 10.131 through and including 10.139 of the Customs Regulations (19 CFR 10.131–10.139). Section 10.134, Customs Regulations, states, in relevant part, that the showing of intent as to actual use, such intent being manifested at the time of importation as required by section 10.133(a), shall be made by filing with the consumption entry a declaration of intended use *or* by entering the proper subheading of an HTS actual use provision on the entry form. The record in this case shows that a declaration of intent was filed twenty one days after the date of the entry summary.

HQ 961431 concluded that protestant's failure to file the declaration required by section 10.134, Customs Regulations, with the entries is not fatal to the claim under heading 9817.00.60, HTSUS, because under section 10.112, Customs Regulations, the declaration of intended use may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final. This is incorrect and no longer represents Customs position in the circumstances. It is clear from section 10.133 of the Customs Regulations that with respect to a claim under an actual use provision such use must be *intended at the time of importation*. It is likewise clear from section 10.134 that one method of

showing the required intent is by filing a declaration of intended use *with the consumption entry or entries*. Failure to file the required declaration with the entry or entries indicates noncompliance with section 10.133. This noncompliance is not curable under section 10.112 as this provision relates merely to the late filing of documents.

Holding:

Failure to file a declaration of intended use under an actual use provision with the consumption entry of entries indicates noncompliance with section 10.133, Customs Regulations, and is not curable under section 10.112, Customs Regulations. In these circumstances, a claim under heading 9817.00.60, HTSUS, is not sustainable.

Effect on Other Rulings:

HQ 961431, dated December 1, 1998, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF TRAVEL BAGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification and revocation of rulings and treatment relating to the tariff classification of travel bags.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to modify/revoke rulings pertaining to the tariff classification of travel bags, and to revoke any treatment previously accorded by Customs to substantially identical merchandise.

DATE: Comments must be received on or before April 5, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textiles Branch (202) 927–2302.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**in-**

formed compliance" and **"shared responsibility."** These concepts are premised on the idea that, in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that Customs intends to modify one ruling letter and revoke one ruling letter, each pertaining to the tariff classification of a travel bag. Customs might normally treat the misclassifications stated in these rulings as clerical error. Due to the passage of significant time, however, and the potential for adverse impact on the importers, Customs is publishing notice of the proposed modification and revocation.

Although in this notice Customs is specifically referring to two rulings, these being Port Ruling Letters (PD) D85274 and PD D83382, this notice covers any rulings relating to the specific issues of tariff classification set forth in the two rulings, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, an internal advice memorandum or decision, or a protest review decision) on the issues subject to this notice, should advise Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs intends to revoke any treatment previously accorded by the Customs Service for substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling that was issued to a third party to importations involving the same or a similar issue, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in the classification of substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise, or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision on this notice.

In PD D85274, dated December 10, 1998, one of the three bags at issue, identified by style number 75187 and by the name "Garden Party," was classified in subheading 4202.22.8050, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), textile category 670, which in pertinent part, provides for "* * * Handbags, whether or not with shoulder strap, including those without handle: With outer surface of sheeting of plastic or of textile materials: With outer surface of textile materials: Other: Other: Other, Of man-made fibers." The bag measured approximately 15 inches by 10½ inches by 4 inches, had one zippered central compartment, one zippered pocket sewn into the lining, and two carrying handles composed of the same material as the outer surface (100 percent polyester textile material).

In PD D83382, dated November 20, 1998, an open top, 100 percent wool woven tote bag was classified in subheading 4202.92.2000, HTSUSA, which in pertinent part, provides for "* * * Travel, sports and similar bags: With outer surface of textile materials: Of vegetable fibers and not of pile or tufted construction: Other." PD D85274 and PD D83382 are set forth as Attachments A and B, respectively, to this document.

Upon review of PD D85274, we find that the dimensions and features of the bag identified as "Garden Party" are similar to those of travel bags known as "tote" bags, and that the bag should be classified in subheading 4202.92.3031, HTSUSA, textile category 670, the provision for "Trunks * * *: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other, Other: Of man-made fibers: Other."

Upon review of PD D83382, we note that wool is not a vegetable fiber, and find that the bag should therefore be classified in subheading 4202.92.3091, HTSUSA, textile category 870, which provides for "Trunks * * *: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other, Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), Customs intends to modify PD D85274, and to revoke PD D83382, and any other rulings not specifically identified which involve identical or substantially identical merchandise, to reflect the proper classification of the articles according to the analyses in Proposed Headquarters Ruling Letters (HQ) 963573 and HQ 963610, which are set forth as Attachments C and D, respectively, to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), Customs intends to revoke any treatment that Customs may have previously accorded to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 13, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 10, 1998.

CLA–2–42 SE:C:D G02 D85274
Category: Classification
Tariff No. 4202.22.8050

MR. MICHAEL R. SPANO
MICHAEL R. SPANO & CO.
190 McKee Street
Floral Park, NY 11001

Re: The tariff classification of polyester and polypropylene handbags from China.

DEAR MR. SPANO:

In your letter dated November 25, 1998 you requested tariff classifications for three handbags on behalf of your client, Candies Inc.

Style no. 75187 "Garden Party" is a handbag with outer surface of 100% polyester fabric. It measures approximately 10½" x 4" x 15". The bag features a single interior compartment with a zippered top closure. A single zippered pocket is sewn into the lining of the compartment. The outer surface is decorated on one side with three artificial flowers made of textile materials. The bag is carried by means of two handles made of the same fabric as its outer surface.

Style no. 75194 "Seeing Stripes" is a handbag with outer surface of 75% polypropylene and 25% polyester. It measures approximately 8" x 2½" x 10". The bag features a single interior compartment with a zippered top closure. The bag is carried by means of two handles made of the same fabric as its outer surface.

Style no. 75192 "Heather or Not" is a handbag with outer surface of polypropylene fabric. It measures approximately 8½" x 2½" x 10". The bag features a single interior compartment with a zippered top closure. A single zippered pocket is sewn into the lining of the compartment. The bag is carried by means of two plastic handles.

The applicable subheading for styles nos. 75187, 75192, and 75194 will be 4202.22.8050, Harmonized Tariff Schedule of the United States (HTS), which provides for handbags, with outer surface of textile materials, other, other, other, of man-made fibers. The rate of duty will be 19 percent ad valorem.

Item 4202.22.8050 falls within textile category designation 670. Based upon international textile trade agreements, products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

ARTIS M. MORGAN, JR.,
Port Director,
Seattle.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Jamaica, NY, November 20, 1998.

CLA–2–42:K:TC:B6:G21 D83382
Category: Classification
Tariff No. 4202.92.2000

MR. CLAY SMITH
1726 Edgewater Drive
Edgewater, FL 32132

Re: The tariff classification of a tote bag from Colombia.

DEAR MR. SMITH:

In your letter dated October 30, 1998, you requested a classification ruling.

The submitted sample is an open top 100% wool woven tote bag. This bag measures 13 inches long x 10½ inches high and is produced in a variety of different colors. It has no top closure and is carried by a 27 inch long shoulder strap. Your sample will be returned to you as requested.

The applicable subheading for the 100% wool woven tote bag will be 4202.92.2000, Harmonized Tariff Schedule of the United States Annotated, which provides for travel, sports and similar bags, with outer surface of textile materials, of vegetable fibers and not of pile or tufted construction, other. The duty rate will be 6.2% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JOHN J. MARTUGE,
Area Director,
JFK Airport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 963573 GGD
Category: Classification
Tariff No. 4202.92.3031

MR. MICHAEL R. SPANO
MICHAEL R. SPANO & COMPANY
190 McKee Street
Floral Park, NY 11001

Re: Modification of PD D85274; "Garden Party" Bag; "Tote" Bag similar to Travel, Sports and Similar Bags; Not Handbag.

DEAR MR. SPANO:

In Port Ruling Letter (PD) D85274, issued to you on December 10, 1998, one of the three bags classified therein, identified as "Garden Party" and by style number 75187, was classified in subheading 4202.22.8050, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), textile category 670, which in pertinent part, provides for "* * * Handbags, whether or not with shoulder strap, including those without handle: With outer surface of sheeting of plastic or of textile materials: With outer surface of textile materials: Other: Other: Other, Of man-made fibers." We have reviewed PD D85274 and have found the ruling to be in error. Therefore, this ruling modifies PD D85274.

Facts:

The sample bag classified in PD D85274 had an outer surface composed of 100 percent polyester textile material. The bag measured approximately 15 inches by 10½ inches by 4

inches, had one zippered central compartment, one zippered pocket sewn into the lining, and two carrying handles that were composed of the same material as the outer surface.

Issue:

Whether the "Garden Party" bag is properly classified as a handbag in subheading 4202.22.8050, HTSUSA, or as a "tote," similar to a travel bag in subheading 4202.92.3031, HTSUSA.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Among other articles, heading 4202, HTSUSA, covers traveling bags, toiletry bags, handbags, and similar containers. Subheading 4202.92, HTSUSA, provides in part for travel, sports and similar bags. Additional U.S. Note 1 to chapter 42, HTSUSA, states:

> For the purposes of heading 4202, the expression "*travel, sports and similar bags*" means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading. * * *

Subheadings 4202.21 through 4202.29, HTSUSA, provide for handbags. The word "handbag" is defined in Webster's New World Dictionary, Second College Edition, 1972, as: "1. a small container for money, toilet articles, keys, etc., carried by women; purse 2. a small suitcase or valise."

In Headquarters Ruling Letter (HQ) 957917, issued July 7, 1995, this office reconsidered and reclassified in subheading 4202.92.1500, HTSUSA, a woven cotton bag which measured approximately 14 inches by 10 inches by 5 inches. The bag had a reinforced open top with double carrying straps, one central compartment, no lining, and no additional pockets or compartments. We stated that tote bags similar to those described immediately above were no longer classifiable as handbags, and that such bags were to be regarded as multipurpose bags for carrying various personal effects.

In HQ 962364, dated December 8, 1998, we classified three separate bags with outer surfaces of cotton and textile carrying handles. Each bag measured approximately 9 inches in height by 11½ inches in width, and had gussets allowing expansion to approximately 3 inches in depth. Two of the bags had one zippered central compartment, no lining, and no additional pockets, and one of the bags had an open top, central compartment and a flat pocket attached to its interior lining. We found that none of the bags was designed or intended to be used as a container for items normally carried in a woman's handbag, and that all three styles were multipurpose bags for carrying various personal effects other than, or in addition to, those normally carried in a woman's handbag. The bags were classified as travel bags in subheading 4202.92.1500, HTSUSA.

In this case, the dimensions and features of the bag identified as style 75187 indicate that the bag is a multipurpose "tote" for carrying various personal effects other than, or in addition to, those normally carried in a woman's handbag. The bag is classified in subheading 4202.92.3031, HTSUSA.

Holding:

PD D85274, dated December 10, 1998, is hereby modified.

The bag identified by style no. 75187 and as "Garden Party," is classified in subheading 4202.92.3031, HTSUSA, textile category 670, the provision for "Trunks * * *: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other, Other: Of man-made fibers: Other." The general column one duty rate is 18.1 percent ad valorem. There are no applicable quota/visa requirements for the products of World Trade Organization ("WTO") members. The textile category number above applies to merchandise produced in non-WTO countries.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part

categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office. The *Status Report On Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 963610 GGD
Category: Classification
Tariff No. 4202.92.3091

MR. CLAY SMITH
1726 Edgewater Drive
Edgewater, FL 32132

Re: Revocation of PD D83382; Tote Bag of Woven Wool.

DEAR MR. CLAY:

In Port Ruling Letter (PD) D83382, issued to you November 20, 1998, a woven wool tote bag was classified in subheading 4202.92.2000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which in pertinent part, provides for "* * * Travel, sports and similar bags: With outer surface of textile materials: Of vegetable fibers and not of pile or tufted construction: Other." We have reviewed PD D83382 and have found the ruling to be in error. Therefore, this ruling revokes PD D83382.

Facts:

The sample bag which was the subject of PD D83382 was described as an open top, 100 percent wool woven tote bag which measured 13 inches in length by 10½ inches in height, and which had a shoulder strap 27 inches in length.

Issue:

Whether the bag is properly classified in a provision for travel bags with outer surface of textile materials composed of vegetable fibers

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The provision in which the tote bag at issue was classified—subheading 4202.92.2000, HTSUSA—provides for bags with an outer surface of textile materials that are composed

of vegetable fibers. The subject bag, however, is composed of 100 percent woven wool. Although woven wool is a textile material, wool is composed of animal fibers, not vegetable fibers. The bag is therefore classified in subheading 4202.92.3091, HTSUSA, which provides for travel bags with outer surface of textile materials that are other than vegetable fibers, paper yarn, silk, or man-made fibers.

Holding:

PD D83382, issued November 20, 1998, is hereby revoked.

The tote bag composed of woven wool is classified in subheading 4202.92.3091, HTSUSA, textile category 870, which in pertinent part, provides for "* * * Travel, sports and similar bags: With outer surface of textile materials: Other, Other: Other." The general column one duty rate is 18.1 percent ad valorem. There are no applicable quota/visa requirements for the products of World Trade Organization ("WTO") members. The textile category number above applies to merchandise produced in non-WTO countries.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office. The *Status Report On Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton

Senior Judges

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon

(Slip Op. 02–14)

RUBIE'S COSTUME CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 99–06–00388

[Plaintiff's motion for summary judgment GRANTED; Defendant's motion DENIED]

(Decided February 19, 2002)

Adduci, Mastriani & Schaumberg, L.L.P. (V. James Adduci II), for Plaintiff.
David W. Ogden, Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office; *John J. Mahon,* Civil Division, Department of Justice, Commercial Litigation Branch; *Beth C. Brotman,* Office of the Assistant Chief Counsel, International Trade Litigation, United States Customs Service, of counsel, for Defendant.
Morgan, Lewis & Bockius LLP (Mark N. Bravin), for Paper Magic Group, Inc. as Amicus Curiae.

OPINION

I

PRELIMINARY STATEMENT

WALLACH, Judge: Plaintiff, Rubie's Costume Company ("Rubie's"), sued to challenge the United States Customs Service's ("Customs") denial of its domestic interested party petition concerning the classification of certain imported textile costumes as "festive articles" within Chapter 95 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Plaintiff now moves for summary judgment, claiming that these costumes should have been classified as "wearing apparel" within subheading 6114.30.30 of the HTSUS. The Government contends that Customs properly classified the merchandise as "festive articles" and on this basis, cross-moves for summary judgment in its favor.

At the heart of this case is the exclusion from Chapter 95 which covers "Toys, Games and Sports Equipment: Parts and Accessories Thereof" by Note 1(e) of "fancy dress, of textiles, of chapters 61 or 62." It is the Government's contention that "fancy dress" as used in the Note means formal wear such as tuxedos or elaborate stage costumes. Thus, it ar-

gues the exclusion does not write out inclusion in Chapter 95 of inexpensive and "flimsy" Halloween costumes. If the phrase includes both types of clothing; the formal and expensive, and the cheap and flimsy, then the Government cannot prevail since the exclusion covers the imported articles.[1] Because common usage in the United States includes both types of clothing within the phrase "fancy dress," because Note 1(e) of Chapter 95 clearly excludes textile costumes from the definition of "festive articles," because the Government's analysis requires that the Explanatory Note be read to include a reference to tuxedos and ball gowns in a chapter devoted to toys, games and sports equipment, and under the doctrine of ejusdem generis, the court denies the Government's motion and grants the Plaintiff summary judgment.

II

BACKGROUND

The subject merchandise consists of imported textile costumes made in toddler, child and adult sizes, traditionally worn in conjunction with the celebration of Halloween or to costume parties. Plaintiff Rubie's Costume Co., Inc.'s Memorandum of Law in Support of its Motion for Summary Judgment ("Plaintiff's Memo") at 2.[2] It includes an exemplary "Scream Robe" costume submitted by Customs, as well as photographic and verbal descriptions of other costumes including "Witch of the Webs," "Abdul, Sheik of Arabia," "Pirate Boy," "Cute & Cuddly Clown," and "Witch."[3]

Under the Tariff Schedule of the United States ("TSUS"), adult Halloween costumes were originally classified as wearing apparel while children's costumes were classified as toys. This classification of adult costumes was subsequently challenged by domestic importers in *Traveler Trading Co. v. United States*, 13 CIT 380, 713 F. Supp. 409 (1989), which resulted in Customs' reclassification of the merchandise as toys due to their flimsy construction and lack of utilitarian value. *Id.* at 381, 411. The court's rationale in *Traveler Trading* equated flimsiness with a lack of utilitarian value as wearing apparel, thereby concluding that flimsy Halloween costumes are classifiable as toys in Chapter 95 as they "have no practical application as wearing apparel and serve only to amuse." *Id.* at 383, 412. After the adoption of the Harmonized Tariff Schedule of the United States ("HTSUS") in 1988, which replaced the TSUS, Customs reversed its position and once again determined that all textile costumes should be classified as items of apparel. *See* Plaintiff's

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[1] And assuming that the items at issue are articles of wearing apparel, the subject of Chapters 61 and 62.

[2] *See also*, Request For Information of July 26, 1996, Ex. 2 to Defendant's Cross-Motion XXX, The parties are in accord that the subject merchandise is a costume made of knitted 100 percent polyester, Plaintiff's Statement of Undisputed Facts, but differ as to whether it is "flimsy, non-durable and generally recognized as not a normal article of wearing apparel." Defendant's Statement of Additional Undisputed Material Facts and Plaintiff's Response.

[3] The "Witch of the Webs," is a child's size knit polyester black dress that falls in raw edged points just below the knee. The "Abdul Sheik of Arabia" costume is an adult size ankle length sheath of knit polyester with some unfinished edges. The "Pirate Boy" is a child size costume made up of separate top and pants of knit polyester with raw edged points at sleeves and waist. The "Witch" costume is a child's size long sleeved black dress of knit polyester with raw edged points. The "Cute and Cuddly Clown" is a one piece knit polyester jumpsuit with substantial finish work. Customs determined the latter was fancy dress and all the others were not. *See* HQ 959545, June 2, 1997 (Ex. 3 to Plaintiff's Memo).

Memo at 3 *(see also* Headquarters Ruling ("HQ") 087291, December 4, 1990) ("contrary to the position adopted by Traveler's counsel, Customs believes that the nomenclature previously interpreted has changed and that a dissimilar interpretation is required by the text of the HTS regarding the classification of Halloween costumes.") (Ex. 10 to Plaintiff's Memo). Due to the negative impact of this reversal on domestic importers of costumes, Customs' decision was challenged again resulting in a settlement agreement providing that "all costumes of flimsy nature and construction lacking durability and generally recognized as not normal articles of apparel shall be classified as festive articles under section 95.05.9060." Settlement agreement between Traveler Trading Co., Inc., and the United States at 2 (Ex. 13 to Plaintiff's Memo). Customs subsequently issued Headquarters Ruling Letter ("HRL") 957318 on November 15, 1994, essentially reiterating the position taken within the agreement (i.e., that costumes of a flimsy nature and construction, lacking durability, and generally not recognized as normal articles of apparel are classifiable within Chapter 95 HTSUS). HQ 957318, Nov. 15, 1994 (Ex. 14 to Plaintiff's Memo).

On July 26, 1996, Plaintiff Rubie's, a domestic costume manufacturer, filed a Request for Information pursuant to 19 U.S.C. § 1516 and 19 C.F.R. § 175.1 requesting that Customs rule on the tariff classification of various textile costumes. *See* Ex.2 to Plaintiff's Memo. On June 2, 1997, Customs issued HRL 959545 determining that the merchandise was classified within subheading 9505.90.6090 (this provision was later amended to 9505.90.6000 with no pertinent changes). *See* Ex.3 to Plaintiff's Memo. Plaintiff subsequently filed a domestic interested party petition with Customs pursuant to 19 U.S.C. § 1516 and 19 C.F.R. § 175.11. On July 22, 1998, in response to Rubie's petition, Customs issued Headquarter Ruling 961447 denying the petition for reclassification of the costumes under Chapter 61 or Chapter 62, HTSUS, as "wearing apparel" and affirming their classification under Chapter 95, HTSUS, as "festive articles." Customs' rationale, as in HRL 957318, focused on the texture and quality of the materials as "flimsy and non-durable textile costumes whose principal intended use is for a one time festive occasion are distinct from 'wearing apparel' which the courts have held to be used for decency, comfort, adornment or protection." HQ 961447, July 22, 1998. This texture and quality is to be determined by such factors as the extent of styling features such as zippers, inset panels, darts or hoops, and whether the edges of the materials had been left raw or finished. *Id.*

Subsequent to the issuance of HRL 961447, Rubie's timely filed a notice pursuant to 19 U.S.C. § 1516(c) and 19 C.F.R. § 175.23 contesting the decision in HRL 961447. On June 25, 1999, Customs notified Rubie's, pursuant to 19 U.S.C. § 1516(c) and 19 C.F.R. 175.25(h) that the entry of the "Scream Robe Costume", had been liquidated on that day. The entry in question, dated March 8, 1999, was liquidated as entered, free of duty, under Chapter 95, HTSUS, as "festive articles." On June

29, 1999, Rubie's commenced the current action to challenge Customs' classification of the subject merchandise claiming jurisdiction pursuant to 28 U.S.C. § 1581(b).

III

ARGUMENTS

A. PLAINTIFF ARGUES THE SUBJECT MERCHANDISE IS CLASSIFIABLE IN CHAPTER 61 OR 62 AS "WEARING APPAREL"

Rubie's argues that the imported textile costumes at issue are classifiable within either Chapter 61 or 62, HTSUS, covering articles of apparel and clothing accessories. More specifically, Plaintiff argues that the "Scream Robe Costume," liquidated free of duty as a "festive article" on June 25, 1999, is properly classifiable within subheading 6114.30.30, HTSUS, as an "other" knitted or crocheted garment with a duty rate of 15.5% *ad valorem*. Rubie's Complaint at ¶17. Although Plaintiff recognizes that Subheading 9505.90.6090, covering "festive, carnival or other entertainment articles," includes accessories such as plastic swords or false noses, articles worn for Halloween or other similar costumed events, Plaintiff argues that Note 1(e) to Chapter 95 specifically excludes costumes of textile materials from the scope of "festive articles" as defined by the relevant provisions of Chapter 95. Rubie's Complaint at ¶¶ 19, 20. Note 1(e) to Chapter 95 specifically provides that Chapter 95 "does not cover * * * sports clothing or fancy dress, of textiles, of chapter 61 or 62." Plaintiff argues that "fancy dress" is synonymous with the word "costume" and consequently costumes of textile materials are excluded from Chapter 95 and properly classifiable within either Chapter 61 or 62 of the HTSUS. *Id.;* Plaintiff's Memo at 6.

B. DEFENDANT ARGUES THE SUBJECT MERCHANDISE IS CLASSIFIABLE IN CHAPTER 95 AS A "FESTIVE ARTICLE"

The Government argues that Customs properly classified the merchandise as "festive articles" within Chapter 95, HTSUS, because the costumes at issue are not "wearing apparel" in the context of Chapter 61 or 62 of the HTSUS. *See* Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Cross-motion for Summary Judgment in its Favor ("Defendant's Opposition") at 5. Defendant contends that Note 1(e) to Chapter 95, excluding "fancy dress of textiles," refers to elaborate or substantial costumes such as those worn by actors in the theater, and formal wear worn to special events. *See id.* at 13. Consequently, it says, flimsy or non-durable costumes such as the merchandise in the present case are properly classifiable as "festive articles" within Chapter 95. The Government contends this criterion of separating costumes according to durability or quality was developed in order to accurately separate "festive articles" from "wearing apparel" and is in accordance with the General Rules of Interpretation. *See id.* at 20. The Government further argues that HRL 961447, the ruling denying Rubie's petition for reclassification, is entitled to deference as a reasonable interpretation of an ambiguous statute. *See Id.* at 7.

IV

STANDARD OF REVIEW

A. SUMMARY JUDGMENT

Under USCIT R. 56(c), summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The moving party bears the burden of demonstrating the absence of all genuine issues of material fact. *Avia Group Int'l, Inc. v. L.A. Gear California, Inc.*, 853 F.2d 1557, 1560 (Fed. Cir. 1988). This may be done by producing evidence showing the lack of any genuine issue of material fact or, where the non-moving party bears the burden of proof at trial, by demonstrating that the nonmovant has failed to make a sufficient showing to establish the existence of an element essential to its case. *Id.; Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

To successfully oppose a properly supported motion for summary judgment, the nonmovant may not simply rest on its pleadings. Rather, it must produce evidence "by affidavits or as otherwise provided in [USCIT R. 56]" which "set forth specific facts showing that there is a genuine issue for trial." USCIT R. 56(e); *see also Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390–91 (Fed. Cir. 1987) ("[T]he party opposing summary judgment must show an evidentiary conflict on the record; mere denials or conclusory statements are not sufficient.").

In determining whether the parties have met their respective burdens, the Court does not "weigh the evidence and determine the truth of the matter," but simply determines "whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). In so doing, the court views all evidence in a light most favorable to the nonmovant, drawing all reasonable inferences in the nonmovant's favor. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *Avia Group Int'l*, 853 F.2d at 1560.

B. SUMMARY JUDGMENT AND THE "PRESUMPTION OF CORRECTNESS"

The Government's classification decision is presumed to be correct, *see* 28 U.S.C. § 2639(a)(1) (1988 & Supp. V), and the party challenging the decision has the burden of overcoming the statutory presumption by a preponderance of the evidence. *See St. Paul Fire & Marine Ins. Co. v. United States*, 6 F.3d 763, 769 (Fed. Cir. 1993). Where however, there are no material facts in dispute and only questions of law remain, Plaintiff must show legal error to overcome the presumption of correctness. *See Commercial Aluminum Cookware Co. v. United States*, 20 CIT 1007, 1013, 938 F. Supp. 875, 881 (1996). If the court finds, because of evidence or other authority presented by Plaintiff, that the presumption has been overcome, this court must reach the correct classification on its own or after remand. *See Jarvis Clark Co. v. United States*, 733 F.2d 873, 878 (Fed. Cir. 1984). The present dispute is primarily a question of law, so the

presumption of correctness does not apply. *Universal Elecs. Inc. v. United States*, 112 F.3d 488, 492 (Fed. Cir. 1997)(holding that "although the presumption of correctness applies to the ultimate classification decision * * * the presumption caries no force as to questions of law").

C. Deference Owed to HRL 961447 Under *Mead*

The Supreme Court in *United States v. Mead Corp.*, 533 U.S. 218, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001), articulated the degree of judicial deference owed to a challenged tariff customs classification. The Court held that "a tariff classification has no claim to judicial deference under Chevron, there being no indication that Congress intended such a ruling to carry the force of law * * *." *Mead*, 121 S.Ct. at 2168. The "[d]elegation of such authority may be shown in a variety of ways, as by an agency's power to engage in adjudication or notice-andcomment rulemaking, or by some other indication of a comparable congressional intent." *Id.* at 2171. The Court held that even if the ruling failed to meet this standard, it would still be eligible to claim respect according to its persuasiveness under *Skidmore et al. v. Swift & Co.*, 323 U.S. 134 (1944). *Id.* at 2168. This persuasiveness will "depend upon the thoroughness evident in its consideration, *the validity of its reasoning*, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore*, 323 U.S. at 140 (emphasis added).

Customs decided the instant case based on a standard classification ruling and did not utilize notice and comment procedures. Consequently, this court will not afford the deference articulated in *Chevron U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 843–45, 81 L.Ed.2d 694, 104 S.Ct. 2778 (1984), but will rather defer to Customs' classification ruling only to the extent it has the power to persuade. Because that ruling is both logically and factually defective it lacks that persuasive power. As the Federal Circuit noted in *Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3rd 1077, 1083 (Fed. Cir. 2001), "* * * if the Government's position is unreasonable, deference does the agency no good."

V

Analysis

When the point of contention is in which of two or more tariff classifications particular merchandise falls, the analysis that a court must undertake consists of two steps: "first, construe the relevant classification headings; and second, determine under which of the properly construed tariff terms the merchandise at issue falls." *Bausch & Lomb Inc. v. United States*, 148 F.3d 1363, 1365 (Fed. Cir. 1998); *see also Universal Elecs., Inc. v. United States*, 112 F.3d 488, 491 (Fed. Cir. 1997). Although this analysis entails issues of law and fact, the ultimate question remains the proper classification of the merchandise within a particular heading. *Bausch & Lomb Inc. v. United States*, 148 F.3d 1363, 1365. Courts have consistently viewed this analysis as a question of law, as it is

the meaning of the terms in the statute that is at issue. *Id.; see also, Sports Graphics, Inc. v. United States,* 24 F.3d 1390, 1391 (Fed. Cir. 1994); *Universal Elecs., Inc. v. United States,* 112 F.3d at 492.

The dispute in the present case revolves around the interpretation of provisions within Chapter 95 and Chapter 61 or 62 of the HTSUS. Chapter 95 covers "Toys, games and sports equipment; parts and accessories thereof", while Chapter 61 covers "Articles of apparel and clothing accessories, knitted or crocheted", and Chapter 62 "Articles of apparel and clothing accessories, not knitted or crocheted." The Government argues that the costumes at issue must be classified within subheading 9505.90.60 which provides for "articles, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: * * * other: * * * other:" at 0% duty. Plaintiff points to Note 1(e) of Chapter 95 which states that "this chapter does not cover * * * e) Sports clothing or fancy dress, of textiles, of chapter 61 or 62." Plaintiff therefore directs the court to chapters 61 or 62 for proper classification of the merchandise at issue. More specifically, Plaintiff points to subheading 6114.30.30 which provides for "other garments, knitted or crocheted: of man-made fibers: * * * other." Rubie's Complaint at ¶17.

The General Rules of Interpretation ("GRI") of the HTSUS govern the proper classification of merchandise. *See Orlando Food Corp. v. United States,* 140 F.3d 1437, 1439 (Fed. Cir. 1998). Pursuant to GRI 1, "classification shall be determined according to the terms of the headings and any relative section or chapter notes." GRI 1, HTSUS; *see also Orlando Foods,* 140 F.3d at 1440. Consequently, the terminology utilized within the relevant headings and notes is key for proper determination.

The central point of contention is whether the subject merchandise constitutes "fancy dress, of textiles, of chapters 61 or 62," which would properly exclude it from Chapter 95 and place it in Chapter 61 or 62. The term "fancy dress" is not defined within the HTSUS. "When a tariff term is not defined in either the HTSUS or its legislative history, the term's correct meaning is its common meaning." *Mita Copystar Am. v. United States,* 21 F.3d 1079, 1082 (Fed. Cir. 1994) (citing *Lynteq, Inc. v. United States,* 976 F.2d 693, 697 (Fed. Cir. 1992). Moreover, in construing tariff terms "the court may rely upon its own understanding, dictionaries and other reliable sources." *Medline Indus. Inc. v. United States,* 62 F.3d 1407, 1409 (Fed. Cir. 1995) (citing *Marubeni Am. Corp. v United States,* 35 F.3d 530 (Fed. Cir. 1994). The court reviewed several dictionaries and found that the term "fancy dress" is indeed synonymous with "costumes" worn for masquerades or similar costumed events. Webster's Third New International Dictionary (Merriam-Webster, Inc. 3d. Ed. 1986) defines "fancy dress" as follows:

> Fancy dress n : a costume (as for a masquerade or party) departing from currently conventional style and usu. representing a fictional

> or historical character, an animal, the fancy of the wearer, or a particular occupation.

Id. at 822.

Plaintiff cites to the Cambridge International Dictionary of English which defines fancy dress as:

> (esp. Br and Aus) Fancy dress (Am usually costume, masquerade) is what you wear for a party where everyone dresses in special clothes as a particular type of character or thing: They came to the fancy-dress party dressed as two policewomen.

Plaintiff's Memo at 7–8 (quoting Cambridge International Dictionary of English (1995 ed.) at 503.

Plaintiff also cites to The Oxford English Dictionary (R.W. Burchfield ed., 2d ed. 1989), which defines "fancy dress" as "[a] costume arranged according to the wearer's fancy, usually representing some fictitious or historical character," *id.* At 716, and Mary Brooks Picken's The Fashion Dictionary (3d. ed. 1973) which states that "fancy dress" is a "costume representing a nation, class, calling, etc., as worn to a costume ball or masquerade party." *Id.* at 134; Plaintiff's Memo, page 7–8.

Finally, The American Heritage Dictionary defines "fancy dress" as "a masquerade costume". The American Heritage Dictionary at 489. It further defines a "masquerade" as "1.a. A costume party at which masks are worn; masked ball. b. A costume for such a party *or* ball." *Id.* at 770 (emphasis added). From these definitions, it is clear that "fancy dress" undeniably signifies "costume" and that the term is not limited to formal balls.

Although Defendant admits that "fancy dress" may include costumes, Defendant's interpretation of the term focuses on the adjective "fancy," as in "of superfine quality," rather than the phrase "fancy dress." Defendant's Opposition at 12–13. This reading leads Defendant to the conclusion that "fancy dress" of the kind excluded from Chapter 95 consists of elaborate or substantial costumes such as those worn by actors in the theater, and formal wear such as tuxedos and ball gowns worn to special events. *Id.* at 13. Defendant further argues that this definition requires the imposition of a criterion separating flimsy costumes from elaborate or substantial costumes, the latter falling within the purview Note 1(e) and thereby excluded from Chapter 95. *Id.*[4]

To support this contention Defendant cites to *Traveler Trading,* 13 CIT 380, a case where "the costumes which were intended for adults had been classified under the TSUS, as wearing apparel by the Customs Service and the importer argued that they should be classified as toys, as

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[4] Defendant argues that the meaning of "fancy dress" as a "costume" is a foreign usage. *See* Defendant's Opposition and Cross at 14. Prior to oral argument the court asked the parties to address a Google.com, www.google.com, search of the term "fancy dress ball" which indicated to the court that the term meant more than high end parties and that it indeed often signified inexpensive "costumes" in the United States as well. At oral argument counsel for Amicus provided the court computer searches of the terms "fancy dress" and "fancy dress ball."it claimed were representative of "the vast universe of materials on the internet," and that they "* * * make it very clear that not only in the category of fancy dress balls, in which attire is semi-formal and formal, but in the other fancy dress affairs * * * where the idea is to put as much effort, energy, money, style, into the costume as possible; that the kind of merchandise that's at issue in this case could not, * * * under any conceivable reasonable view be * * * in any way connected with those events."

Continued

were similar costumes intended for children." Defendant's Opposition at 15. The court held that "* * * given the flimsy construction and nature of these costumes, they have no practical application as wearing apparel and serve only to amuse. Accordingly, the Court finds that defendant has failed to show a reasonable basis in fact or law for its position at the administrative level in classifying these adult costumes as wearing apparel." *Traveler Trading,* 13 CIT at 383. The *Traveler Trading* decision was not, however, decided under the HTSUS, and as Plaintiff correctly points out "this decision pertained to the classification of costumes under the TSUS under which the interpretation of "fancy dress" was not an issue. As such, the decision is neither applicable nor controlling here." Plaintiff's Memo at 13. As was noted in the House Conf. Rept., "[i]n light of the significant number and nature of changes in nomenclature from the TSUS to the HTS, decisions by the Customs Service and the courts interpreting nomenclature under the TSUS are not to be deemed dispositive in interpreting the HTS." House Conference Rep. No. 100–576 at 549 (1988). The TSUS never contained the term "fancy dress" nor did it contain a provision for festive articles. Consequently the issue of whether textile costumes are properly classifiable as wearing apparel or festive articles never arose in *Traveler Trading.*

The criteria of flimsiness under the *Traveler Trading* decision is inapplicable in the present case for precisely the same reasons. The HTSUS specifically provides for the exclusion of "fancy dress" from Chapter 95, consequently if the item constitutes "fancy dress" it will be excluded; if it does not and is a festive article, it will be included. As previously noted by various courts, resort to the TSUS is not necessary where the statutory language of the HTSUS is clear. *Amity Leather Company v. United States,* 20 CIT 1049, 1054, 939 F. Supp. 891, 896 (1996) (citing *Pima Western, Inc. v. United States,* 20 CIT 110, 915 F. Supp. 399 (1996). Proper classification therefore turns on the term "fancy dress" and the criteria of flimsiness is thereby rendered irrelevant under the HTSUS.

The court examined the definitions of the term "fancy dress" and finds Defendant's analysis incongruent with the obvious meaning of

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The court further searched Google using the term "fancy dress" finding the term is commonly used in the United States in ways not limited to the meaning ascribed by the Government and Amicus. Thus, for example, the court found a web page for the United States Power Squadrons in South Florida which described parties as "fancy dress affairs with prizes for the best costumes." They "are casual events where uniforms and ceremony are forgotten." www.usps.org/localusps/d22/pastevents.htm. Attached were photographs of participants in "Roman" dress. The costumes were clearly homemade. They could not be described as involving "as much effort, energy, money, style * * * as possible." In addition, Guns and Ammo on line, www.gunsandammomag.com/dynamic.asp?intSectionID=213&intArticleID=2274, describes "cowboy shooting" satisfying "* * * a strong urge to get up in fancy dress and go play acting," and Holly's Dog Training, www.ctcv.org/events/index2.htm from Southern California describes a visit to Mexico where "* * * we did much partying (including fancy dress on the very-important-to-Mexicans Day of the Dead." Johns Hopkins University, www.jhu.edu/~ hr1/humanserv/diversity_summary.html, in Baltimore, Maryland, in explaining the Jewish holiday Purim, describes it as involving "Jews in fancy dress * * *" Time magazine, www.time.com/time/magazine/1997/int/970804/spl.america_the_b.html describes the clothes at a party hosted by then President Bill Clinton where guests "* * * were asked to trick themselves out * * * in jeans, cowboy hats and boots," as "fancy dress." Finally, XTREME Radio www.xtremeradio.com/freak_news.shtml in Las Vegas, Nevada, describes a home-made costume worn by a Michigan high-school student "* * * to wear at his school's Halloween fancy dress contest."

There were numerous others examples in the United States showing similar usages of fancy dress for elementary school events and sale of cheap Halloween costume accessories. These usages belie Amicus' representation.

"fancy dress."[5] An overview of relevant definitions indicates that "fancy dress" signifies "costume" as worn at Halloween or other similar events. Moreover, it is simply incongruous that a reference to tuxedos and ball gowns would be included within the Notes of Chapter 95 which covers "Toys, Games and Sports Equipment: Parts and accessories thereof." While a Halloween costume might arguably be considered an accouterment to a toy or game, a tuxedo or ball gown simply can not. It is reasonable to read this note as a direct decision to exclude clown suits from inclusion in the chapter; it is unreasonable to read it as excluding tuxedos. Consequently, the court rejects Defendant's arguments with regard to "fancy dress."

Finally, Plaintiff raises the ejusdem generis rule of construction in arguing that costumes are excluded from Chapter 95. Plaintiff's Memo In Opposition To Defendant's Cross Motion For Summary Judgment at 18–20. The rule provides that "where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated." Black's Law Dictionary (West Publishing, Co. 6th ed.) at 517. In its memo Plaintiff argues that "the Explanatory Note to Heading 9505 provides that the heading covers festive, carnival and other entertainment articles which include: articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and mustaches and paper hats. Applying the rule of ejusdem generis, it would defy all logic to assert that the subject clothes are of the same class or kind as masks, false ears and noses." Defendant argues that "even if ejusdem generis were applicable to the Explanatory Note statement, the flimsy Halloween costumes which are used for amusement more than anything else are more alike to the examples listed, which are similarly intended for amusement and/or disguise, than they are to the wearing apparel of Chapters 61 and 62." Defendant's Reply to Plaintiff's Opposition to Defendant's Cross-Motion For Summary Judgment in Its Favor at 17. The court finds that it is clear that masks, wigs and similar articles are of a different kind than textile costumes as they clearly constitute an accessory to a costume rather than wearing apparel.

Since it is only "fancy dress" belonging to Chapter 61 or 62 that is excluded from Chapter 95, it is not sufficient to simply determine the significance of the term "fancy dress" but rather it becomes necessary to determine the scope of Chapter 61 and 62 as well. Chapter 61 covers "Articles of Apparel and Clothing Accessories, Knitted or Crocheted," and Chapter 62 "Articles of Apparel and Clothing Accessories, not Knitted or Crocheted." The Supreme Court in *Arnold v. United States,* 147 U.S. 494, 496 (1893) defined the term "wearing apparel" as "not an uncommon one in statutes, and * * * used in an inclusive sense as embracing all

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[5] The court has examined the sample "Scream" costume submitted by Customs as well as photographic descriptions of the "Witch of the Webs" costume which is a child "size knit polyester black dress that falls in raw edged points just below the knee" and which Customs says does not constitute an item of wearing apparel. *See* HQ 959545, June 2, 1997 (Ex. 3 to Plaintiff's memo). That examination shows garments which, might be unusual, but would certainly not be indecent or too flimsy for a child to wear in warm weather.

articles which are ordinarily worn—dress in general."[6] Moreover, in *H.I.M./Fathom, Inc. v. United States*, 21 CIT 776, 981 F. Supp. 610 (1997), the court examined the definition of "clothing" and concluded that wetsuits would properly fall within that definition as they were articles worn as an outer covering for the human body at a particular time. *Fathom*, 981 F.Supp. at 615. The court in *Fathom* also concluded that "the language of the HTSUS, in contrast to the TSUS, evidences statutory intent that articles are not classified within the garment provisions primarily based on use." *Id.* at 617. The court went on to state that "while classification by use under certain sections of the HTSUS can be implied from the language of the headings * * * the garment provisions involved, Chapters 61 and 62, are not use provisions." *Id.* Finally, the court concluded that it is the garment's fabric as either knitted or woven that was of crucial importance for the subheading at issue in *Fathom*, (*i.e.* TSUS heading 6113.) *Id.* Consequently, in order for merchandise to be properly classified within Chapters 61 or 62, strong emphasis must be placed on the material of the merchandise and whether it could be worn at a particular time.

In the present case, it is Halloween costumes of textile materials that are at issue. These are articles that are meant to adorn the human body at a particular time, either on Halloween or at any other event where the wearer desires to mimic another. They fall well within the norms of apparel as it is viewed in the United States; outer garments which provides at least minimal decency and which sends the world a message about the wearer through their appearance or use. *See id.* at 15. The fact that such garments may fail to constitute clothing worn by most on a daily basis does not negate their inherent nature as articles of clothing. Consequently, as the merchandise at issue is made of textiles and designed to be worn it is properly classifiable within subheading 6114.30.30 of the HTSUS.

VI

CONCLUSION

Note 1(e) to Chapter 95 excludes "fancy dress, of textiles, of Chapter 61 or 62" from the Chapter. As the costumes at issue in the present constitute fancy dress of textile, and are wearing apparel, they are classifiable in Chapter 61.

For the foregoing reasons, Plaintiff's Motion For Summary Judgment is granted in full, and Defendant's Cross-Motion For Summary Judgment is denied.

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[6] Plaintiff seems to be drawing a distinction between "articles of apparel" and "wearing apparel," however the court finds these terms interchangeable in the present instance. *See* Plaintiff's Memorandum in Opposition to Defendant's Cross Motion for Summary Judgment at 17. The noun "apparel" is commonly defined as "a person's clothing." Webster's Third New International Dictionary at 102. Consequently, whether the term is preceded by a present participle, *i.e.* "wearing," describing what it does rather than a noun, i.e. "article," describing what it is, does not make a difference.

The Judges of the United States Court of International Trade
cordially invite you to attend a
Special Session of the Court
to honor the memory of our late esteemed colleagues

The Honorable James L. Watson
Judge, 1966–2001

and

The Honorable Herbert N. Maletz
Judge, 1967–2002

Tuesday, March 5, 2002
3:00 P.M.

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